

INITIAL STATEMENT OF REASONS

a. Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 87764(a)

Specific Purpose:

This section is adopted to create a list of circumstances under which the Department may order a suspension of new resident admissions and the authority which allows the Department to implement such actions.

Factual Basis:

This subsection is necessary for clarity and consistency with Health and Safety (H&S) Code section 1569.545 which authorizes the Department to prohibit a licensee from admitting new residents into their facility when the licensee has been cited for a violation that presents a direct and immediate risk to the health, safety, or personal rights of a resident of the facility, and the violation is not corrected immediately.

The Department's regulatory authority to suspend new resident admissions at a facility pursuant to Health and Safety Code section 1569.545 will ensure the protection of current and prospective residents of an RCFE by providing motivation for the licensee to immediately resolve serious health, safety, and personal rights violations before admitting new residents to minimize risk of liability and financial loss because of the suspension.

Section 87764(a)(1)

Specific Purpose:

This subsection is adopted to specify the procedure and conditions under which the Department may issue an order, to a licensee, to suspend new resident admissions at a Residential Care Facility for the Elderly (RCFE).

Factual Basis:

This subsection is necessary for clarity and consistency with Health and Safety Code section 1569.545 which authorizes the Department to prohibit a licensee from admitting new residents into their facility when the licensee has been cited for a violation that presents a direct and immediate risk to the health, safety, or personal rights of a resident of the facility, and the violation is not corrected immediately.

The Department's regulatory authority to suspend new resident admissions at a facility pursuant to Health and Safety Code section 1569.545 will ensure the protection of current and prospective residents of an RCFE by providing motivation for the licensee to immediately resolve serious health, safety, and personal rights violations before admitting new residents to minimize risk of liability and financial loss as a result of the suspension.

Section 87764(a)(2)

Specific Purpose:

This subsection is adopted to specify the procedure and conditions under which the Department may issue an order to a licensee to suspend new resident admissions at an RCFE.

Factual Basis:

This subsection is necessary for clarity and consistency with H&S Code section 1569.545 which authorizes the Department to prohibit a licensee from admitting new residents into their facility when the facility has failed to pay civil penalties assessed by the Department and after the facility's appeal rights have been exhausted.

The Department's regulatory authority to suspend new resident admissions at a facility pursuant to H&S Code section 1569.545 will ensure the protection of current and prospective elderly residents of an RCFE because it will provide a financial motivation for the licensee to immediately resolve outstanding civil penalty obligations.

Section 87764(b)

Specific Purpose:

This section is adopted to create a list of actions the Department shall take when serving the notice of the order suspend new resident admissions.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly notified of the Department's order to suspend new admissions.

Section 87764(b)(1)

Specific Purpose:

This subsection is adopted to specify the procedure on how and who to serve the written notice of the order to suspend new admissions.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly notified of the Department's order to suspend new admissions. This subsection requires personal delivery to the licensee to ensure the licensee is aware of the suspension order.

Section 87764(b)(2)

Specific Purpose:

This subsection is adopted to specify the procedure on how and who to serve the written order to suspend new admissions.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly served the written order to suspend new admissions.

This subsection requires in situations where the licensee is not at the facility site, the notice of suspension be left with a person designated in the facility file to accept licensing reports. A copy of the notice to suspend new admission must also be mailed to the licensee. This ensures the licensee is properly notified of the suspension order.

Section 87764(b)(3)

Specific Purpose:

This subsection is adopted to specify the procedure on how and who to serve the written order to suspend new admissions.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly served the written order to suspend new admissions. This subsection requires that if the licensee or the person designated in the facility file to accept licensing reports refuses to accept the notice, a note of the refusal must be written on the notice and left at the facility. In the case of refusal, another copy of the notice with a notation of refusal shall also be mailed to the licensee. This helps to ensure the licensee is properly notified of the suspension order.

Section 87764(c)

Specific Purpose:

This section is adopted to create a list of items a notice of the order to suspend new resident admissions shall include.

Factual Basis:

This subsection is necessary for clarity and consistency. This will ensure the licensee is clear on the terms of the order and the appeals process.

Section 87764(c)(1)

Specific Purpose:

This subsection is adopted to specify what information is required to be in the notice issued by the Department when the Department orders a suspension of new resident admissions in a facility.

Factual Basis:

This subsection is necessary for clarity and consistency and will require all applicable statutes and regulations alleged to be violated be listed in the notice. This will ensure the licensee is clear on the alleged violations that caused the suspension order.

Section 87764(c)(2)

Specific Purpose:

This subsection is adopted to specify what information is required to be in the notice issued by the Department when the Department orders a suspension of new resident admissions in a facility.

Factual Basis:

This subsection is necessary for clarity and consistency and will require the date the suspension order is effective to be listed on the notice to suspend new admissions. This ensures the licensee is aware of the date the suspension order becomes effective.

Section 87764(c)(3)

Specific Purpose:

This subsection is adopted to specify what information is required to be in the notice issued by the Department when the Department orders a suspension of new resident admissions on a facility.

Factual Basis:

This subsection is necessary for clarity and consistency and will require the terms of the suspension order be specified including plans of correction for any deficiency cited. Requiring this information helps to ensure the licensee is aware of the suspension order terms and the plan of correction.

Section 87765(c)(4)

Specific Purpose:

This subsection is adopted to specify what information is required to be in the notice issued by the Department when the Department orders a suspension of new resident admissions on a facility.

Factual Basis:

This subsection is necessary for clarity and consistency and requires a factual description of the nature of the deficiency fully stating the way the deficiency presents a direct and immediate risk to the health safety or personal rights of a resident. This information ensures the licensee is aware of the deficiency that caused the suspension order.

Section 87764(c)(5)

Specific Purpose:

This subsection is adopted to specify what information is required to be in the notice issued by the Department when the Department orders a suspension of new resident admissions in a facility.

Factual Basis:

This subsection is adopted to ensure consistency throughout the Community Care Licensing Division by requiring that all orders to suspend new admissions are signed by the Program Administrator.

Section 87764(c)(6)

Specific Purpose:

This subsection is adopted to specify what information is required to be in the notice issued by the Department when the Department orders a suspension of new resident admissions in a facility.

Factual Basis:

This subsection is adopted for clarity and consistency to ensure licensees are aware of their appeal rights.

Section 87764(d)

Specific Purpose:

This subsection enacts a duty to post a copy of the notice to suspend new admissions in a conspicuous location in the facility.

Factual Basis:

This subsection is necessary for transparency. Requiring the facility to post the notice of suspension will allow for existing residents and potential residents to have easy access to information which potentially affects their care and safety.

Section 87764(e)

Specific Purpose:

This subsection is adopted to specify the standard that suspension of new admissions go into effect immediately upon notice and in the case where the licensee chooses to appeal the suspension of new resident admissions at their facility, the suspension will remain in effect throughout the appeal process, consistent with H&S Code section 1569.545(f).

Factual Basis:

This subsection is necessary for clarity and consistency with the H&S Code section 1569.545 which specifies that the suspension ban shall be in effect immediately and shall not be stayed pending the facility's appeal or request for review.

87764(e)(1)

Specific Purpose:

This subsection is necessary to clarify and define what is considered a "new admission" for purposes of this section.

Factual Basis:

This subsection is necessary for clarity and consistency to define what is considered a "new admission" for purposes of this section. Any admission agreement signed prior to the effective date of the notice to suspend new admissions is not considered a new admission.

Additionally, this subsection is necessary for circumstances where a resident has left a facility for a brief hospitalization or a brief stay in a skilled nursing facility and upon return is not considered a new admission and therefore would not be impacted by this suspension order.

Section 87764(f)

Specific Purpose:

This section is adopted mandating suspension of new resident admissions to remain in effect until specific determinations are made by the Department and to create a list those specific determinations.

Factual Basis:

This subsection is necessary for clarity and consistency with the H&S Code section 1569.545 which indicates the suspension of new resident admissions will remain in effect until the Department determines the correction of all the deficiencies as required in the notice of suspension and or has paid applicable civil penalties assessed by the Department.

Section 87764(f)(1)

Specific Purpose:

This subsection is adopted to specify by what means the suspension order may be lifted by the Department.

Factual Basis:

This subsection is necessary for clarity and consistency with the H&S Code section 1569.545 which indicates the suspension of new resident admissions will remain in effect until the Department determines the correction of all the deficiencies as required in the notice of suspension. If the facility does not demonstrate to the Department the correction of all the deficiencies as required in the notice, the Department will conduct a follow up visit within 10 working days following the latest date of correction specified in the notice to determine compliance.

Section 87764(f)(2)

Specific Purpose:

This subsection is adopted to specify by what means the suspension order may be lifted by the Department.

Factual Basis:

This subsection is necessary for clarity and consistency. In situations where a suspension ban is in place because of unpaid civil penalties, the suspension ban will be lifted when the Department determines the facility has paid applicable civil penalties assessed by the Department. The suspension order will be lifted if formal payment arrangements have been made with the Department. In circumstances where the licensee fails to comply with the formal payment arrangements made with the Department, the suspension order may be reinstated.

Section 87764(g)

Specific Purpose:

This subsection is adopted to specify the procedure to notify the licensee of the order to remove the suspension of new resident admissions ban.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly notified of the written order to remove the suspension on new admissions.

This subsection requires personal delivery to the licensee. Personal delivery ensures the licensee is aware the suspension has been removed.

Section 87764(g)(1)

Specific Purpose:

This subsection is adopted to specify the procedure to notify the licensee of the order to remove the suspension of new resident admissions ban.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly notified of the written order to remove the suspension of new admissions. This subsection requires that if the licensee is not at the facility site, the Department's representative will leave the notice with a person designated in the facility file to accept licensing reports. In circumstances when the notice is left with a person other than the licensee, a copy of the notice must also be mailed to the licensee.

Section 87764(h)

Specific Purpose:

This subsection is adopted to specify the standard under which the Department may impose a Temporary Suspension Order if the licensee violates the suspension of admission order by admitting any new resident during the term of the order of suspension. H&S Code section 1569.50 allows the Department to impose a Temporary Suspension Order.

Factual Basis:

This subsection is necessary to ensure licensees abide by the suspension order. Without the deterrent of a Temporary Suspension Order, the licensee will have little reason to abide by the suspension order.

Section 87765(a)

Specific Purpose:

This section is adopted to specify the appeal procedure for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This subsection is necessary for clarity and consistency with the H&S Code section 1569.545(e) which indicates that a licensee may appeal a suspension of new admissions to the director of the Department.

This subsection specifies that the appeal request must be made on a form provided by the Department, the timeframe in which the appeal request must be made, and designates the Deputy Director of CCLD as the person conducting the appeal review.

Section 87765(b)

Specific Purpose:

This section is adopted to specify the appeal procedures for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This section is necessary to ensure the licensee includes all available supporting documentation when requesting an appeal. This will assist in expediting the hearing process and ultimately allow for a timely final determination.

Section 87765(c)

Specific Purpose:

This section is adopted to specify appeal procedures for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This subsection is necessary for clarity and consistency with H&S Code section 1569.545(f) which states, "A suspension of new admissions ordered under this section shall not be stayed pending the facility's appeal or request for review." This subsection avoids ambiguity and clearly informs the licensee of the terms of the suspension on new admissions while their appeal is in process.

Section 87765(d)

Specific Purpose:

This section is adopted to specify appeal procedure for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This subsection is necessary to establish a procedure by which the Deputy Director will conduct the review and render a decision. Additionally, this subsection is necessary to specify the appeal will be amended or dismissed if the Deputy Director determines the suspension order was not issued in accordance with applicable statutes and regulations of the Department in a timely manner. This is necessary to ensure licensees are given due process and are not unjustly impacted by the suspension order if the order was not made in accordance with applicable regulations and statutes.

Section 87765(e)

Specific Purpose:

This section is adopted to specify the appeal procedure for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly notified of the Department's order to suspend new admissions. This subsection requires personal delivery to the licensee to ensure the licensee is aware of the suspension order.

Section 87765(e)(1)

Specific Purpose:

This section is adopted to specify the appeal procedure for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly served the written order to suspend new admissions. This subsection

requires in situations where the licensee is not at the facility site, the notice of suspension be left with a person designated in the facility file to accept licensing reports. A copy of the notice to suspend new admission must also be mailed to the licensee.

b. Identification of Documents Upon Which Department Is Relying

Senate Bill (SB) 1153 (Chapter 706, Statutes of 2014).

c. Local Mandate Statement

These regulations do impose a mandate upon local agencies, but not on local school districts. There are no reimbursable state-mandated costs under Section 17500 et seq. of the Government Code.

d. Statement of Alternatives Considered

The Department determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e. Statement of Significant Adverse Economic Impact on Business

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f. Economic Impact Assessment [Government Code section 11346.3(b)]

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

Creation or Elimination of Jobs Within the State of California

The proposed regulation conforms to SB 1153 (Chapter 706, Statutes of 2014). The proposed regulation implements state law. If there were to be any impact on the creation or elimination of jobs within the State of California, it would be a result of the passage of the enacting law, not the regulation. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

Creation of New or Elimination of Existing Businesses Within the State of California

The proposed regulation conforms to SB 1153 (Chapter 706, Statutes of 2014). The proposed regulation implements state law. If there were to be any impact on the creation of new businesses or the elimination of existing businesses within the State of California, it would be a result of the passage of the enacting law, not the regulation. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of existing businesses within the State of California.

Expansion of Business Within the State of California

The proposed regulation conforms to SB 1153 (Chapter 706, Statutes of 2014). The proposed regulation implements state law. If there were to be any impact on the expansion of businesses currently doing business within the State of California, it would be a result of the passage of the enacting law, not the regulation. Therefore, the Department has determined that this regulatory proposal will not have an impact on the expansion of businesses currently doing business within the State of California.

Benefits of the Regulations

The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state's environment are as follows: 1) require RCFEs to immediately resolve serious health, safety, and personal rights violations before admitting new residents; and 2) equip the Department with a more rigorous enforcement tool to ensure facilities comply with regulations specific to serious health, safety, and personal rights of residents. The promulgation of these regulations is necessary to carry out CCLD's core function of protecting the health and safety of vulnerable elderly population in licensed residential care.

Documents Relied Upon

SB 1153 (Chapter 706, Statutes of 2014).

g. Benefits Anticipated from Regulatory Action

The proposed regulations will ensure the protection of health and safety of a vulnerable elderly population who are either current or prospective residents of the RCFE. The proposed regulatory action will make it necessary for RCFEs to immediately resolve serious health, safety, and personal rights violations before admitting new residents. The proposed regulations will further benefit RCFE residents by equipping the Department with a more rigorous enforcement tool, and in doing so, providing improvement to the overall licensing enforcement system to

ensure facilities comply with regulations specific to serious health, safety, and personal rights of residents.

h. Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.